Supreme Court, U. S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1999

FRANKLIN PROPERTY COMPANY,
D/B/A/ THE HILTON INN,

*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD
AND
HOTEL, MOTEL, RESTAURANT EMPLOYEES AND BARTENDERS UNION LOCAL 12, HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION

*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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June, 1980

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*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in this case on March 20, 1980.

## OPINION BELOW

The opinion of the Court of Appeals is not yet officially reported and is reprinted in Appendix A (1a-3a). The Decision and Order of the National Labor Relations Board, including the Decision of the Administrative Law Judge, is reported at 232 NLRB 873 and is reprinted in Appendix B.

## JURISDICTION

The mandate of the Court of Appeals was entered on April 15, 1980. Its judgment issued on March 20, 1980. The Court's jurisdiction to review the judgment by writ of certiorari is based on 28 U.S.C. Section 1254(1).

## QUESTION PRESENTED

Whether a request for information about union activities, directed by a Company official in a non-coercive manner to an employee who had previously offered to provide such information, violates Section 8(a)(1) of the National Labor Relations Act.

## STATUTE INVOLVED

Section 8(a)(1) of the National Labor Relations Act, as amended (29 U.S.C. Section 158(a)(1)), provides as follows:

> Section 8(a): It shall be an unfair labor practice for an employer—
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

Section 7 of the Act provides as follows:

> Section 7: Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and

shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

## STATEMENT OF FACTS

The facts in regard to the question presented here are not in dispute and may be summarized as follows:

The Union had begun organizational activities among the Petitioner's employees in April 1976. At that time, waitress Evelyn Link informed General Manager William Green that she was not in favor of the Union and that she would assist him in the event of a union campaign (13a-14a).

On August 24 or 25, 1976, Green received a copy of the representation petition that the Union had filed with the National Labor Relations Board, in which it requested an election in a unit of the Hotel's employees. Green, who was in the Hotel at the time, called Link, who was in the dining room area, on the telephone and asked her if she knew anything about union cards being distributed in the kitchen area or about a union organizational effort in progress. Link replied that she did not. Green then asked her if she had been visited at her home by the Union, and Link again replied in the negative. The conversation ended on this note, with Link informing Green that she was busy and could not talk further (13a).

## THE DECISION OF THE NATIONAL LABOR RELATIONS BOARD

On these facts, the Administrative Law Judge held that Petitioner had violated Section 8(a)(1) of the Labor Act, rejecting the Hotel's contention that the incident was of the "class of casual, isolated interrogation which the Board has deemed noncoercive or too minimal to warrant a

remedy" (14a). The Board itself, on Petitioner's exceptions to this ruling, upheld the decision of the Administrative Law Judge (4a-5a).

## THE DECISION OF THE COURT OF APPEALS

The Court of Appeals upheld the Board's order in this regard (as well as in all other regards), concluding that there was "substantial evidence to support" the Board's conclusions. It enforced the Board's order in its entirety (1a-3a).

## REASON FOR GRANTING THE WRIT

This case presents a significant issue under the National Labor Relations Act which has not been, but should be, decided by this Court. The issue is whether an employer engaged in coercive interrogation, which has long been held to violate Section 8(a)(1) of the Act,[1] when one of its officials directs a casual inquiry, devoid of any threats, regarding union activities to an employee who had previously volunteered to assist him in the event of a union organizational effort. Both the Board and the Courts of Appeals have consistently held that a casual inquiry regarding union activities, isolated from any other unfair labor practices,[2] does not violate the Act.

Thus, in a series of decisions, the Board itself has dismissed allegations related to interrogations where there was no coercive intent or impact. See, e.g., *Arvin Industries, Inc.*, 226 NLRB 925 (1976) (no unlawful coercion nor inducement of fear or reprisals where supervisors made

[1] See, e.g., *Jervis Corp. v. National Labor Relations Board*, 387 F.2d 107, 111 (C.A. 6, 1967); *Surprenant Mfg. Co. v. National Labor Relations Board*, 341 F.2d 756, 762-763 (C.A. 6, 1965).

[2] The other Section 8(a)(1) violations found by the Board in this case, occurred well after Green's August 25 conversation with Link and were entirely unrelated, in time and circumstances, from this incident.

isolated requests to see union authorization cards and an inquiry as to how union meetings went the night before); *Pepsi-Cola Bottling Co.,* 211 NLRB 870, 872 (1974) (supervisor's interrogation of employee about union activities is not a per se violation of the Act; no evidence that supervisor was seeking information on which to base retaliation against employee in this case, hence no coercion in casual conversation about union activity between supervisors and an employee who were on a first-name basis with one another); *Sentry Food Store,* 198 NLRB 879, 882 (1972) (lack of evidence of coercion on threats of reprisal fails to support allegation of a Section 8(a)(1) violation where supervisor asked a number of employees whether "there was any talk about unions"); *Rotek, Inc.,* 194 NLRB 453, 456 (1971) (no evidence of employer coercive conduct sufficiently closely related or connected to the interrogation to make it unlawful).

Moreover, the Courts of Appeals have also repeatedly held that supervisory questions to rank-and-file employees concerning possible union activities and their views on such activities, do not violate the Act where they are noncoercive in intent or impact, are isolated and are casual. See, e.g., *Federal Mogul Corp. v. National Labor Relations Board,* 566 F.2d 1245 (C.A. 5, 1977), where the Fifth Circuit found no violation where a supervisor asked 12 employees, out of a unit of 500, questions about their and other employees' union activities; *Penasquitos Village, Inc. v. National Labor Relation Board,* 565 F.2d 1074, 1081-1082 (C.A. 9, 1977); *W-I Canteen Service, Inc. v. National Labor Relations Board,* ____ F.2d ____ (C.A. 7, September 25, 1979), 102 LRRM 2447, 2454; *National Labor Relations Board v. P. B. and S. Chemical Company,* 567 F.2d 1263 (C.A. 4, 1977); *National Labor Relations Board v. Monroe Tube Co.,* 545 F.2d 1320 (C.A. 2, 1976). Indeed, the Court of Appeals for the Sixth Circuit has itself appeared to have found that interrogation does not

violate Section 8(a)(1) of the Act in circumstances such as those presented in the instant case. Thus, in *National Labor Relations Board v. Welsh Industries, Inc.*, 385 F.2d 538 (C.A. 6, 1967), the Sixth Circuit denied enforcement of the Board's finding of unlawful interrogation, concluding that two isolated inquiries to two employees out of a complement of 58, relating to union cards, did not violate Section 8(a)(1) of the Act. As the Court noted, "To offend the Act, interrogation must rise to the level of restraint or coercion." The Court went on to hold that it was for the General Counsel to prove his charge of illegality, not for the employer to have to "justify each innocuous inquiry about a Union campaign." 385 F.2d at 540. *See also, Hughes & Hatcher, Inc. v National Labor Relations Board,* 393 F.2d 557 (C.A. 6, 1967), where the Sixth Circuit held that the Board was not warranted in finding a Section 8(a)(1) violation where the employer interrogated 5 employees out of a unit of 600.

Interrogation of employees concerning their or other employees' union activities is not *per se* unlawful, as both the Board and the courts have long held, *National Labor Relations Board v. Super Toys, Inc.*, 458 F.2d 180, 182 (C.A. 9, 1972); *Dieckbrader Express, Inc.*, 168 NLRB 867, 869 (1967). The decision of the Court of Appeals in the case at bar runs contrary to these and other decisions and creates a conflict within the Courts of Appeals that warrants review by this Court.

## CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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June 1980

# APPENDICES

# APPENDIX A

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*United States Court Of Appeals For The Sixth Circuit*

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*No. 77-1726*

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*National Labor Relations Board,*
*Petitioner,*

*v.*

*Franklin Property Company, Inc., d/b/a*
*The Hilton Inn,*
*Respondent.*

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Before: MERRITT and MARTIN, Circuit Judges; and PECK, Senior Circuit Judge.

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## ORDER

On November 8, 1976, Hotel, Motel, Restaurant Employees and Bartenders Union, Local 12, filed unfair labor practice charges against Franklin Property Company, Inc. d/b/a The Hilton Inn. The charges alleged violations of the National Labor Relations Act, as amended, 29 U.S.C. § 151 *et seq.* and arose during the course of the Union's organizational campaign.

The first violation occurred early in the Union's campaign when respondent's general manager, William Green, asked employee Evelyn Link if she knew anything about union cards being passed around the hotel. He told her he felt she would tell him if she knew anything about it.

He also interrogated Link as to whether the employees on her shift were involved and asked her if any union organizers had contacted her at home.

Green was also involved in an incident with employees Link and Mike Pauley several days before the election. The gist of the incident was that Green threatened to have Link watched, to "get" her after the election and told her he would reprimand her to death. Green told Pauley that in the future the hotel may not need bus boys anymore.

Respondent's food and beverage manager, Theodore Johni, was also involved in two violations of the Act. The first occurred when Johni called employee Jerry Donohue into his office ostensibly for completion of a periodic evaluation. During the conversation, Johni asked Donohue about the union campaign and went on to relate to Donohue that he had experienced a pay cut when the union was voted-in at a hotel in which he was working. The conversation ended by Johni telling Donohue that if he were Donohue he would not vote for the union.

The other violation occurred when employee Joyce Schoemer was reading her mail, including campaign literature, prior to the start of her shift. Johni approached her and, after ascertaining she was reading campaign material, asked her what the union could do for her. Schoemer replied that the union could give her security. Johni replied that there was no such thing as security and that "if anything . . . you could lose benefits."

On April 11, 1977, the matter was heard before an administrative law judge who found that respondent had violated Section 8(a)(1) of the Act by coercively interrogating and threatening employees. Accordingly, he ordered respondent to cease violating the Act and to post the standard notice.

On September 30, 1977, the NLRB issued its Decision and Order in which it affirmed the rulings, findings, and the conclusions of the administrative law judge. 232 N.L.R.B. No. 132.

All of the factual findings made by the administrative law judge and affirmed by the NLRB were disputed. However, the administrative law judge resolved the conflicts in favor of the employees testimony. There is substantial evidence to support these conclusions. The order of the NLRB should be enforced. *Rupp Forge Co. v. N.L.R.B.*, 484 F.2d 1382 (6th Cir. 1973); *N.L.R.B. v. RAWAC Plating Co.*, 422 F.2d 1259 (6th Cir. 1970); *N.L.R.B. v. International Union of Operating Engineers, Local 18*, 500 F.2d 48 (6th Cir. 1974); *N.L.R.B. v. Ogle Protection Service*, 375 F.2d 497 (6th Cir. 1967), *cert. denied*, 389 U.S. 843.

Entered by Order of the Court
JOHN P. HEHMAN,
Clerk.

March 20, 1980

# APPENDIX B

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*United States Of America*
*Before The National Labor Relations Board*

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*Franklin Property Company, Inc.*
*d/b/a The Hilton Inn*

*and*

*Hotel, Motel, Restaurant Employees & Bartenders Local 12, Hotel & Restaurant Employees And Bartenders International Union, AFL-CIO*

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*Case 9—CA—10784*

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## DECISION AND ORDER

On July 18, 1977, Administrative Law Judge Joel A. Harmatz issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the Charging Party filed a reply brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has

decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order.

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## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Franklin Property Company, Inc. d/b/a The Hilton Inn, Sharonville, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

Dated, Washington, D.C. September 30, 1977

HOWARD JENKINS, JR., Member
JOHN A. PENELLO, Member
BETTY SOUTHARD MURPHY, Member

(SEAL) National Labor Relations Board

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[1] The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] In the absence of exceptions thereto, Member Jenkins adopts, *pro forma*, the Administrative Law Judge's dismissal of certain 8(a)(1) allegations concerning campaign statements made during group meetings by Respondent's agents, Green and Johni.

*United States Of America*
*Before The National Labor Relations Board*
*Division Of Judges*

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*Franklin Property Company, Inc. d/b/a The Hilton Inn*

*and*

*Hotel, Motel, Restaurant Employees & Bartenders Local 12, Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO*

---

*Case No. 9-CA-10784*

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*James R. Schwartz, Esq.*, of Cincinnati, OH, for the General Counsel.

*Warren M. Davison, Esq. (Shawe & Rosenthal)*, of Baltimore, MD, for the Respondent.

*Jerry F. Venn, Esq., and Kevin P. Jones, Esq.*, of Cincinnati, OH, for the Charging Party.

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## DECISION

### Statement of the Case

JOEL A. HARMATZ, Administrative Law Judge: This proceeding was heard in Cincinnati, Ohio on April 11, 1977, upon an unfair labor practice charge filed on November 8, 1976, and a complaint issued on January 3, 1977, alleging that Respondent violated Section 8(a)(1) of the Act by coercively interrogating employees concerning union activity, by threatening employees with more onerous working conditions because of their union activity, and by conducting group meetings with employees in which

they were threatened with loss of benefits if the Union were designated as employee representative. In its duly filed answer, Respondent denied that any unfair labor practices were committed. After close of the hearing, briefs were filed on behalf of the General Counsel, the Charging Party, and the Respondent.

Upon the entire record in this proceeding, including consideration of the posthearing briefs and observation of the witnesses and their demeanor while testifying, I hereby find as follows:

## I. The Business of the Respondent

Respondent is an Ohio corporation engaged in the operation of a hotel-motel in Sharonville, Ohio, the sole facility involved in this proceeding. During the 12-month period preceding issuance of the complaint, a representative period, Respondent in the course and conduct of said operations received goods valued in excess of $50,000 which it purchased and caused to be transported in interstate commerce to said place of business directly from points outside the State of Ohio. During said period, Respondent also received gross revenues in excess of $500,000 from guests, less than 75% of whom remained one month or more.

The complaint alleges, the answer admits, and I find that, at all times material herein, Respondent was and has been an employer as defined in Section 2(2) of the Act, engaged in commerce and in operations affecting commerce as defined in Section 2(6) and (7) of the Act.

## II. The Labor Organization Involved

The complaint alleges, the answer admits, and I find that the Union is, and has been, a labor organization as defined in Section 2(5) of the Act.

## III. The Alleged Unfair Labor Practices

### A. *The Issues*

The complaint in this case imputes various independent 8(a)(1) violations to certain of Respondent's agents. Said unfair labor practices allegedly occurred in the course of an initial effort on the part of the Union to organize Respondent's previously unrepresented employees. It is charged that William Green, general manager of Respondent's Inn, and Theodore Johni, who at times material to this proceeding was food and beverage manager at that location, engaged in coercive interrogation of employees concerning union activity, and threatened both reprisals for union activity and reduced benefits if the Union were designated by a majority.

### B. *Backbround*

Following the opening of the union campaign, which commenced in April 1976, the Union, on August 24, 1976,[1] filed a representation petition in Case No. 9-RC-11665. A preelection hearing was conducted on September 15, with a Decision and Direction of Election having been subsequently issued by the Regional Director for Region 9 on October 6. The election was scheduled for November 10, in the appropriate unit consisting of about 117 employees. However, two days prior thereto, on November 8, the Union filed the instant unfair labor practice charges. The aforesaid Regional Director, in the face of the Union's failure to file a "request to proceed," conducted the election as scheduled, electing to impound the ballots. To date, the ballots cast in said election have not been opened and counted.

### C. *Concluding Findings*

#### 1. The conduct of William Green and Theodore Johni at group meetings

##### a. *William Green*

Respondent's campaign to combat organization was planned by its legal counsel, Mr. Warren Davison. The

[1] All dates refer to 1976 unless otherwise indicated.

latter in late August met with management as the initial step in formulating the Company's preelection strategy, and to instruct supervisors as to their role in the campaign, as well as the limitations imposed by law on their conduct. Both Green and Johni attended the session. In the course thereof it was determined that Green, acting on continuing advice of Davison, would be the sole resident supervisor to wage the employer's campaign. Others, including Ted Johni, were instructed to remain silent, with their participation limited to responding to questions addressed to them by employees.

Later, Davison planned and drafted the format for the Employer's campaign, which specified the dates on which the Company would conduct antiunion meetings, mail campaign literature, and distribute leaflets. All the literature, including union speeches, were submitted to Green by Davison.

The General Counsel makes no direct challenge to the legitimacy of the text of the materials utilized by Green during his various antiunion speeches. Instead the General Counsel maintains that Green departed substantially from the speeches drafted by Davison, and that, in doing so, certain of his remarks constituted violations of the Act.

More specifically, pursuant to the schedule worked out by Attorney Davison, employee meetings were conducted on company time on October 20, October 27, and November 3. On each occasion, the employees were broken down into four groups, with separate meetings held among the food and beverage personnel working daytime hours, those working nights, the housekeepers, and the bellhops and drivers, respectively. Bill Green addressed employees at all meetings, but was the sole spokesman only at those conducted on October 20.

In support of the General Counsel's assertion that Green departed from the prepared text of the speeches to render expressions violative of the Act, employees Evelyn Link and Susan Spalding testified that Green made various

statements to the effect that with union representation, employees would sustain a loss of benefits.[2]

Green testified that he read the speech given on October 20 verbatim. He concedes, however, that he paraphrased portions of the prepared text delivered on October 27 and November 3.[3] Green admitted that in the second speech, he stated that if the Union were to come in, ". . . benefits would be up for grabs, but they would be negotiable." He denied, however, that any representative of management at any of the group meetings, stated that if the Union came in benefits would immediately cease, or that the company would no longer provide certain fringe benefits such as vacation, hospitalization, etc. The thrust of the General Counsel's testimony is also countered by Green's testimony that Mike Johnson, the president of Franklin Properties, during a question and answer session, answered an inquiry, by stating that if the Union got in benefits would probably continue until a contract was negotiated. With respect to the Company's obligation upon unionization, Green admits to telling employees that, "If the Union wins the election all they have won is the right to bargain; all we have to do is bargain with them in good faith." Green denies stating that the Company would refuse to agree to anything, while admitting that employees were informed that the Company would not agree to anything "economically inadvisable" for the hotel.

Upon assessment of the testimony, it is my conclusion that the General Counsel has failed to offer credible proof substantiating the allegation that Green made unlawful statements at the various group meetings. It is true, as shall be seen *infra,* that I did not regard Green as an entirely reliable witness. At the same time, however, the testimony of Link and Spalding as to what they heard at the group meetings failed to provide a reliable basis for

[2] It would only belabor the issue to outline the various statements including the shifting versions thereof, which Link and Spalding attribute to Green.

[3] The speech delivered on October 20, which is in evidence as Respondent's Exhibit 8 makes no reference to a subject matter imputed to Green by Spalding and Link on that date.

finding that Greer departed from legitimate campaign argumentation in presenting the Company's views either through his reading of the prepared speeches, his independent efforts to paraphrase or expressions made during question and answer periods. Respondent's formal campaign literature, including the basic text of speeches delivered at the group meetings, while artfully drafted to remain within the bounds of free speech guarantees, was calculated to drive home a central theme that unionization could lead to dire consequences for employees. A variety of arguments based on technical discussion of the law and perogatives of employers and unions thereunder, as they applied to diverse hypothetical situations was used to drive home this point. To the unsophisticated listener or reader, it is entirely possible that Respondent's charge of reduced economic status would be taken as stemming directly from the Employer's reaction to union representation, rather than the independent causes lawfully articulated in the propaganda. This, essentially is the basis for my mistrust of this aspect of the testimony of Link and Spalding. Both impressed me as testifying from their subjective interpretation of Green's statements, rather than the words actually used or the true substance thereof. In addition, Link struck me as somewhat argumentative, and, with respect to this aspect of her testimony, it was my distinct impression that her zealous enthusiasm for the Union distorted her perspective of what occurred at the group meetings. As was true in the case of Link, the testimony of Spalding, discloses a limited capacity for recall, and a difficulty in differentiating between what she felt was said and what in fact was said. She was not regarded as a reliable corroborating witness. Considering the conflicting testimony against the record as a whole, that offered in support of the defense also seemed the more probable and it is deemed an effective refutation of the illegality attributed to Green in this respect. Accordingly, I shall dismiss the allegations that Respondent violated Section 8(a)(1) of the Act by Green's statements at the group meetings.

b. *Theodore Johni*

An allegation of the complaint raises the question of whether Respondent violated Section 8(a)(1) through statements made by Ted Johni, an admitted supervisor, at a group meeting, in which he allegedly threatened employees with a cut in wages if the Union were designated at the election.[4] Testimony was offered that during a question and answer session at one of the group meetings conducted for night shift food and beverage employees, Johni indicated that it was possible for that employees could receive less pay when a union comes in, citing his past experience while employed in Cleveland, Ohio, at a Holiday Inn. Spalding and Link both testified that Johni spoke up spontaneously, stating that he earned $150 a week at the Holiday Inn, but that after the union came in his salary was cut to about $90 a week.

Johni claims that he spoke at this meeting only after an employee inquired as to whether he had been in a union. He claims that, in describing his salary cut at that time, he attributed its cause to the scale negotiated by the union.

Although generally I regarded Johni as an untrustworthy witness, in this instance, I do believe that he described the pay cut as a byproduct of collective bargaining, rather than mere advent of the union. In this respect it has been noted that a witness called by the General Counsel, Pamela Mason,[5] testified that Johni on several occasions

[4] The briefs of the General Counsel and Charging Party do not claim specifically that Johni's statement concerning his pay cut at a group meeting constituted an independent violation of Section 8(a)(1). However, out of an abundance of caution, considering the breadth of the allegations pertaining to Johni in the complaint, it is deemed necessary to dispose of this issue with specificity.

[5] In the brief of General Counsel, the latter offers his own view that the testimony of Pamela Mason failed to present substantial evidence of a violation of Section 8(a)(1). Without detailed discussion of the unfair labor practice allegations to which her testimony pertains, it is sufficient to state that in full agreement with the General Counsel, I did not regard her

related his Holiday Inn pay cut experience to her. According to her testimony, Johni explained his alleged reduction in Salary as resulting from the "negotiated scale." With this testimony, together with the doubt held as to the capacity of Link and Spalding to recall accurately, and without significant omission, material aspects of campaign argumentation made by Respondent's agents, I find that the General Counsel's evidence fails to credibly offset testimony that Johni, at the group meeting in question, described the cut in wages as resulting from a contract reached through collective bargaining. As such, his comment was devoid of threat of reprisal, but simply amounted to a legitimate campaign pronouncement protected by Section 8(c) of the Act. Accordingly, I shall dismiss the 8(a)(1) allegations relative thereto.

### 2. General manager Green's interrogation of Evelyn Link

Evelyn Link, a waitress, testified that on or about August 24, after she received word that Respondent had been served with the Union's election petition, she received a telephone call from Green while at work. Green previously had been in the dining room with friends at a table served by Link. The telephone conversation consisted of Green's asking Link if she knew anything about cards being passed in the kitchen, and his going on to state that he had heard persistent rumors about a union attempting to be organized. Green also expressed his feeling that if Link knew anything about it she would tell him. Link responded that she had not seen any cards in the last few days. After this, Green went on to ask if Link's shift were involved and if she had been contacted at home by union organizers. Link responded in the negative. The conversation ended when Link advised Green that she was busy.

In this regard, Link's testimony stands uncontradicted and, indeed, Green admitted that early in the campaign,

testimony as sufficiently reliable to constitute substantial proof of any alleged unfair labor practices. The allegations to which her uncorroborated testimony is addressed shall be dismissed.

he was left with the impression by Link that she was not for the Union and that he could count on her if he wanted any help in fighting organization. I credit Link in this instance. In so finding, considering the total circumstances,including the lack of any justifiable purpose in Green's inquiries, I do not regard this incident as fitting the class of casual, isolated interrogation which the Board has deemed noncoercive or too minimal to warrant a remedy. I find that Respondent violated Section 8(a)(1) of the Act by Green's questioning Link as to her own and as to the union activity of other employees.

3. Johni's evaluation interview with Jerry Donahue

The complaint alleges that Respondent engaged in several 8(a)(1) violations through separate encounters between employees and food and beverage Manager Ted Johni. These allegations included that relating to testimony by busboy Jerry Donahue that, on or about November 6, 1976, he met with Johni in the latter's office concerning his periodic performance evaluation. During that meeting, Johni referred Donahue to his tardiness problem, and counseled him to improve. In addition, according to the testimony of Donahue, Johni asked, "what do you think about this union stuff?" Donahue replied that he did not know, whereupon Johni repeated his salary cut experience at the Holiday Inn in Cleveland. Johni went on to state, according to the testimony of Donahue, that, while busboys made good money, it was possible that the busboys might sustain a reduction in pay from $2.25 to $1.65 per hour if the Union got in, going on to admonish that if he were Donahue, he wouldn't vote for the Union.

Johni did not deny that the discussion in question took place, or that, in the course of the evaluation session, the Union was discussed. Instead, he asserts that it was Donahue who questioned him about the pay cut at the Holiday Inn, and that he simply replied that his salary declined as a result of the contract that had been negotiated. Johni denied questioning Donahue as to his

feeling about the Union or mentioning the possibility of a reduction in the wage scale of busboys if the Union won the election.

As between Johni and Donahue, I regarded Donahue, an imcumbent employee, as the more credible witness. From my observation of Johni I did not regard his testimony as a straightforward, and his frequent assertion that he only discussed union activity when raised first by employees struck me as too pat.[6]

Based on the credited testimony of Jerry Donahue, I find that Johni coercively interrogated an employee concerning his union sentiment in violation of Section 8(a)(1). As for the further comment concerning the reduction in busboy salaries, Johni's statement was not supported at the time by demonstrable fact attributing this potentially adverse consequence to sources other than the Employer. I find that it went beyond the ambit of fair argumentation, and constituted a threat violative of Section 8(a)(1) of the Act.

4. The confrontation between Johni and Joyce Schoemer

In this respect, Joyce Schoemer, a night waitress, testified that in early October, while eating her dinner in the kitchen and reading her mail, which included campaign literature, she was approached by Johni, who asked what she was reading. Schoemer indicated that she was reading campaign literature. Johni then asked what she thought the Union could do for her. She replied ". . . I think they can give me security." Johni indicated "well, there is no such thing as security," going on to state, "if anything . . . you could lose benefits. They can't get you no more then what you already have . . . . You could lose some of them."

[6] I have not overlooked the testimony that Johni had been instructed as of August 30, to exclude himself from any active role in the campaign unless questioned by employees. Assuming the existence of such instructions it would be unrealistic to conclude that supervisors, though possessed of strong antiunion sentiment, would allow their own views, during a heated campaign, to remain mute in deference to such guidelines.

Johni denied ever discussing the Union with Schoemer. He did recall an incident in October when he entered the kitchen, finding Schoemer reading her mail at a time when the night waitresses were supposed to be working. He admitted learning that Schoemer was reading union literature after asking her what she was reading, but claims that he simply told her that she was on his time, and asked her to go to work.

Notwithstanding Schoemer's confessed difficulty in recalling detail, I do not believe that her account of this conversation was imagined, or that, as an incumbent employee, she would have falsely imputed these statements to Johni, had they not in fact occurred. As heretofore indicated, Johni did not impress me as a credible witness. I credit Schoemer and find that Johni on the occasion in question coercively interrogated Schoemer concerning her union sentiment, and further unlawfully threatened her with a cutback in benefits in the event of unionization. Respondent thereby violated Section 8(a)(1) of the Act.

5. The incident at "Denny's" Restaurant

Uncontradicted evidence shows that on November 7, at about 2 a.m., Link and fellow employee Mike Pauley, a busboy, went to "Denny's," a restaurant regularly frequented by Respondent's employees after work. The restaurant was crowded, and Link and Pauley happened to sit at the counter adjacent to Green and Dick Ammerman, a friend of Green's, who managed a nearby Ramada Inn. A composite of the testimony of Link and Pauley indicates that Green turned to Ammerman at a point in the conversation stating in a loud voice "Dick, it is too bad I haven't been able to convince Evelyn that if her union ever does get in, it will never have a thing to do with the way I manage the Hilton Inn."[7] Then Link addressed Green,

[7] I credit Pauley's testimony that this comment followed an amicable discussion between Link and Green concerning a Company party scheduled for later that week, and Link's inquiry as to whether she could bring a friend who earlier had been discharged by Respondent.

stating "it wasn't my union, . . . I was a member of an organizing committee but I was not alone in this." An argument ensued, with Green indicating ". . . he would get her beginning Thursday, after the election, that he would reprimand her to death, that he would have her watched, that he would get her." Green then glanced at Mike Pauley, stating "Mike, too . . . one of these days I may not have any need for busboys anymore."

Green's testimony hardly presented a credible counter to the, in all essential and material respects, mutually corroborative accounts of Pauley and Link. Green conceded to a hazy recollection of what had transpired, claiming that he was intoxicated at the time. He admitted that there was an argument concerning the union election, but indicated that he could not remember clearly all that was said. With respect to the threatening remarks attributed to Green he testified that, as best as he could recall, he simply told Link that the company could have harrassed her if it had wanted to but that the Company did not operate in this fashion. Ammerman did not testify. The testimony of Green in this respect struck me as an effort, by afterthought, to cleanse his conduct on that occasion, and I regard the testimony of Link and Pauley as the more believable.

I find that by threatening Link and Pauley with reprisals because of their union activity or associations, Respondent violated Section 8(a)(1) of the Act. I would note in this respect that the fact that the threats made were not implemented, or that Green paid for Link's coffee hardly mitigated the seriousness of this violation. Link was perhaps the principal employee protagonist of the Union, who shortly before, had signed a letter critical of the accuracy of certain points made by Green in his attempt to further Respondent's quest of a "No" vote. Such a threat, uttered shortly before the scheduled election, is not to be regarded lightly, insofar as it might well impair the effectiveness of a key employee organizer during the most critical stage of the campaign, a consequence likely to influence the outcome of the election.

## Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Charging Party is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by coercively interrogating employees as to their own and the union sentiment of other employees, by threatening employees with reprisals for having engaged in union activity, and by threatening employees with the loss of benefits should they designate the Union as their collective bargaining representative.

4. The above unfair labor practices effect commerce within the meaning of Section 2(6) and (7) of the Act.

## The Remedy

Having found that Respondent has engaged in certain unfair labor practices, it shall be ordered that Respondent cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, in this proceeding and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:[8]

## ORDER

Respondent, Franklin Property Company, Inc., d/b/a The Hilton Inn, Sharonville, Ohio, its officers, agents, successors and assigns, shall:

[8] In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

1. Cease and desist from coercively interrogating employees concerning their own or the union activity of fellow employees, from threatening employees with reprisals for their union activity, or threatening a loss of benefits if they designate the Union as their exclusive collective bargaining representative, or in any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its hotel-motel in Sharonville, Ohio, copies of the attached notice marked "Appendix."[9] Copies of said notice on forms provided by the Regional Director for Region 9, shall be posted by the Respondent immediately upon receipt thereof, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Decision, what steps Respondent has taken to comply herewith.

Dated, Washington, D.C. July 18, 1977

JOEL A. HARMATZ,
Administrative Law Judge

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[9] In the event the Board's Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

## APPENDIX C

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### NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Act gives you, as employees, certain rights, including the right:

To engage in self-organization

To form, join, or help a union

To bargain collectively through a representative of your own choosing

To act together for purposes of collective bargaining or other mutual aid or protection

To refrain from any or all of these things.

WE WILL NOT question our employees concerning their own or the union sentiment of other employees.

WE WILL NOT threaten employees with reprisals for engaging in union activities nor will we threaten that wages or benefits will be cut if employees designate the Union as their exclusive bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed by Section 7 of the Act.

FRANKLIN PROPERTY COMPANY, INC.
D/B/A THE HILTON INN
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Office Building, Room 3003, 550 Main Street, Cincinnati, Ohio 45202, Telephone 513-684-3634.